

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF: PETITION FOR RATE INCREASE BY THE QUAKERTOWN MARINA))))	ADMINISTRATIVE CAUSE NUMBER: 07-093P
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**REPORT OF HEARING OFFICER, INCLUDING FINDINGS
AND PROPOSAL TO THE NATURAL RESOURCES COMMISSION
AS TO ITS RECOMMENDATIONS TO THE U.S. ARMY CORPS ENGINEERS**

1. PETITION FOR RATE INCREASE BY QUAKERTOWN MARINA, INC.

James L. Girot, Sr., on behalf of Quakertown Marina, Inc., filed a petition dated March 27, 2007 with the Division of State Parks and Reservoirs of the Department of Natural Resources (*Department*) seeking a rate increase for facilities operated on Brookville Lake. The petition states, in pertinent part:

The management of Quakertown Marina, Inc. is requesting a hearing for an increase in dock fees as follows:

- Houseboat Dock B: From \$2,750.00 to \$2,950.00 (annual). This is a new dock. Pontoons and runabouts from \$950.00 to \$990.00.
- Dock C: Houseboats from \$2,375.00 to \$2,550.00 (annual). Cabin Cruisers from \$1,450.00 to \$1,590.00. This dock will have new pedestals and decking in 2007.

Our last dock rate increase was approved in 2003 for the year starting in 2004. The expenses have been increasing annually. For example, there have been increases in our utility costs, insurance, payroll and other general overhead expenses.

Attached to the petition was a Rate Comparison reflecting the proposed rates for Quakertown Marina as compared to other Indiana marinas.

2. SCOPE OF REVIEW

Quakertown Marina, Inc. has petitioned for a rate increase for the 2008 season. The requested rate structure would increase fees for houseboats by 7%, cabin cruisers by 10% and pontoons and runabouts by 5%. The petition by Quakertown Marina, Inc. is governed by a nonrule policy document approved by the Natural Resources Commission (*Commission*) as Information Bulletin #20 (First Amendment) (<http://www.ai.org/nrc/policy/marinara.html>), and published in the *Indiana Register* on August 1, 2003 (26 IR 3761). The Commission reflected that the purpose of the

document was to implement an informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the Department.

According to the nonrule policy document, a lessee desiring a rate increase for a guestroom, slip, or houseboat shall submit its request to the Department, in accordance with the existing lease agreement, for the following year by April 1 of the preceding year. Upon receiving a request, the Department informs the Division of Hearings of the Commission (*Hearings Division*). The Hearings Division assigns a cause number and, in consultation with the Department, selects the date and time for a rate hearing to be held in Indianapolis. The Department advises the lessee of the date, time, and location in Indianapolis of the rate hearing, at which time the lessee and affected persons may provide comments to a Commission hearing officer.

Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate increase request are to be available for the public to review at the lessee's business office, during normal business hours. The lessee shall provide notice of the proposed rate increase petition to each slip or buoy renter. A copy is also to be made available for the public to review at the Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, Indiana, 46204. Affected persons may send written comments concerning the proposed rate increase to the Hearings Division, 402 West Washington Street, Room W272, Indianapolis, Indiana, 46204. In accordance with the existing lease agreements, the Department is to analyze comparable facilities to compare rates with those sought by the lessee. Information used in the analysis is to be available for inspection at the Division of State Parks and Reservoirs office in Indianapolis.

Affected persons may attend the rate hearing and provide oral or written statements. The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The Administrative Orders and Procedures Act (IC 4-21.5) does not apply, but the hearing officer is delegated full authority by the Commission to implement IC 14-11-1-3, and to make any orders reasonable in implementing the purpose of the nonrule policy document. The lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the Department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request for rate increase.

Following the completion of the review, the hearing officer is to make a written report to the Commission. The report is to include written findings with respect to the requested rate increase and a proposal to the Commission for recommendations to the U. S. Army Corps of Engineers. The hearing officer shall also forward a copy of the report to the lessee, the Department, and any other person who requests a copy.

The hearing officer is to present the findings and recommendations to the Commission during a meeting to be held in August or September. During that meeting, the Commission will either recommend approval of the rate increase, disapproval of the rate increase, or approval of a rate increase in an amount less than requested by the lessee.

Recommendation for favorable consideration of a rate increase will not be withheld unless, in the opinion of the Commission, fees submitted exceed fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

3. PUBLIC HEARING AND WRITTEN COMMENTS

A public hearing was conducted as scheduled on July 20, 2007. Comments were received during the hearing as follows:

A. Petitioner at Public Hearing

James L. Girot, Sr., Quakertown Marina.

On the B Dock, which is a new dock, Quakertown Marina, Inc. wants to raise the fee from \$2,750 to \$2,950, annually, for houseboats. For pontoons and runabouts, at the end of that dock, an increase from \$950 to \$990 is sought and for cabin cruisers, which are seasonal, the marina wants to go from \$1450 to \$1590.

On the C Dock, which has just been totally renovated and is very nice although maybe not quite as nice as B Dock, the annual fee is presently \$2,375 and Quakertown is requesting an increase to \$2,550.00. On C Dock, pontoons and runabouts would be increased from \$950 to \$990 cabin cruisers would increase from \$1450 to \$1590, the same as on B Dock.

Mr. Girot reflected that the last rate increase was approved in 2003 for an effective date in 2004. Unlike many marinas, Quakertown is prohibited by the Department from increasing the number of docks, in order to spread out overhead. The overhead must be spread over the existing limited number of docks. Insurance costs are the primary cost increase of concern. Consumer price index increases equal 12% for the period since 2004. The proposed increases are 7% for houseboats, 10% for cabin cruisers and 5% for pontoons and runabouts, which are all well below the consumer price index increases. The lesser increase for the pontoons and runabouts is associated with their lack of use of electricity. Operating expenses are increasing approximately 3% each year, office technology and software costs are increased, fuel costs are increasing and health insurance is increasing by double digits. Utilities costs have increased by 12% from 2005 to 2006 and Mr. Girot has recently been notified of another increase in electric rates. The houseboats and cabin cruisers are getting larger, with more appliances, and they use more utilities for extended periods of time since air conditioning and heating allows for extended boating seasons. Quakertown does not meter electric and there are complaints about the lack of electric metering but they have no infrastructure to do so.

The one complaint received indicated that slip holders run air conditioning and heat when the boat owner is not present and this occurs in violation of lease agreements. The comment concludes that the non-electric boats are subsidizing the electricity for those who use unnecessarily large amounts of electricity. Mr. Girot indicated that the marina

does not allow air conditioners and heat to be run when the boat owner is not present at the marina. However, boat owners will tell them they are leaving it on because they plan to return and then don't come back. Staff of the marina do shut them off when appropriate. Mr. Girot observed that the complaint was on target and they do what they can to police it.

Mr. Girot agreed that metering should be in place at all marinas but to meter would simply be another rate increase issue. The ability to meter requires significant up front expense associated with installing the meters and requires an ongoing expenditure associated with reading the meters.

B. Affected Persons at Public Hearing

No member of the public attended the public hearing and no written comments were received.

C. Affected Persons' Written Comments

The following written comments were received outside of the public hearing.

Cortland Gundling, commented as follows by email on July 19, 2007:

My name is Cortland Gundling and I am a dock holder at Quakertown marina and am writing this letter to protest the rate increase that is being requested by this marina.

Their main reason for the rate increase is the cost of providing electricity to the dock holders. I can understand the reason but if the management of this marine enforces their rules of usage this rate request would not be needed. I list the following reasons.

This management allows the larger boats to run their a/c on the boats when there is nobody on the boat during the week. This is in violation of lease agreement.

This management allows the larger boats to run their heat during the winter instead of shutting down the boats. This is in violation of lease agreement.

If this marina would install meters on each electrical pedestal and bill the boat owner for usage they would greatly increase their profits. Most boat owners would gladly pay for their usage.

It seems this management caters to the larger boat owners and expects the smaller boat owners to subsidize the higher electric bills the larger boats create. A lot of the smaller boat owners are retired and should not be forced to pay for electricity the large boats create by violating the lease.

In short if this management enforces the lease agreement for all boats this rate increase would not be needed.

4. RECOMMENDATION BY THE DNR DIVISION OF PARKS AND RESERVOIRS

As anticipated in the nonrule policy document, the Division of State Parks and Reservoirs has completed a comparative review of slip rates for Quakertown Marina. Gary Miller, Assistant Director of Inns and Concessions, prepared a summary of the review found below:

Marina Rate Increase Request
For 2008
Quakertown Marina

The Department of Natural Resources through the Division of State Parks and Reservoirs has conducted a rate comparison for the Quakertown Marina as directed by the Natural Resources Commission's Bulletin #20. The purpose of this comparison is to compare rates charged by other marinas to determine if the rate increase is justified.

The comparison clearly shows that the rates for the Quakertown Marina are well within the comparables for other marinas.

After reviewing the comparables and taking all information into account, it is the recommendation of the Division of State Parks and Reservoirs that the Quakertown Marina be granted an increase as proposed in the petition.

NOTE: The comparatives considered by the Division of State Parks and Reservoirs is attached as "Exhibit A."

5. FINDINGS AND PROPOSAL BY THE NRC DIVISION OF HEARINGS

A. Findings

1. The scope of the informal administrative review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department.
2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information Bulletin #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.
3. In determining whether to recommend that a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.

4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips. The preponderance of information in the record discloses that the rate increases sought by Quakertown Marina, Inc. are within the range of rates for comparable facilities.
5. The rate increase sought by Quakertown Marina, Inc. amounts to a 7% increase for houseboats, 10% increase for cabin cruisers and 5% increase for pontoons and runabouts, during a time period that the consumer price index has increased by 12% and cost increases associated with insurance coverage and utilities far exceed the consumer price index.
6. Mr. Girot agrees that the metering of electric would possibly benefit slip holders who do not utilize electricity at the marina; however, he notes that the ability to meter electric can be accomplished only through additional expense of infrastructure installation and ongoing meter reading services. Mr. Girot expressed his belief that by imposing a modest increase of 5% for non-electric slips, as compared to 7% and 10% for slips with electricity for houseboats and cabin cruisers, that the disparity can be addressed without the additional infrastructure and ongoing expenses. Mr. Girot's rationale in this regard is reasonable.
8. The Department concurs with Quakertown Marina, Inc.'s proposed rates for the 2008 boating season observing that a comparison to other marinas "clearly shows that the rates for the Quakertown Marina are well within the comparables for other marinas."
9. The requested rates may properly be recommended for approval.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Quakertown Marina, Inc. for the existing facility beginning with the 2008 season should be recommended to the U. S Army Corps of Engineers for approval.

Dated: August 22, 2007

Sandra L. Jensen
Hearing Officer

Service List:

cc: Gary Miller, DNR, Division of State Parks and Reservoirs
James L. Girot, Sr., Quakertown Marina, Inc.